



Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Mines, Minerals and Energy
Virginia Administrative Code (VAC) citation	4 VAC 25 -10; 4 VAC 25 -11
Regulation title	Public Participation Guidelines
Action title	Adoption of Model Public Participation Guidelines
Date this document prepared	8/28/08

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

Public participation guidelines (PPGs) exist to promote public involvement in the development, amendment or repeal of an agency's regulations. Under §2.2-4007.02 of the Code of Virginia, every rulemaking body in Virginia is required to adopt public participation guidelines and to use those guidelines in the development of its regulations. Chapter 321 of the 2008 Acts of Assembly (effective July 1, 2008) mandates that by December 1, 2008, agencies either adopt model public participation guidelines issued by the Department of Planning and Budget of they need to make significant changes to the model guidelines, promulgate new public participation guidelines as fast-track regulations.

The amendments repeal the current public participation guidelines and promulgate revised model public participation guidelines. Highlights of the model public participation guidelines include the addition of negotiated rulemaking panels and regulatory advisory panels and instructions for notification lists. The Department of Mines, Minerals and Energy has made one change to the model PPGs, the addition of a section defining "Agency secretary for purpose of appeal." This section is part of the agency's current PPGs.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On October 22, 2008, the Department of Mines, Minerals and Energy repealed the agency’s existing public participation guidelines and adopted model public participation guidelines with one amendment.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

The Department of Mines, Minerals and Energy has the authority to take this action pursuant to §§2.2-4007, 45.1-161.3, 45.1-361.15, 45.1-161.28, and 45.1-161.292:19 of the Code of Virginia.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This action is being taken pursuant to Chapter 321 of the 2008 Acts of Assembly, which requires every rulemaking body in the Commonwealth to adopt the model public participation guidelines. The agency has no discretion in this matter.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

This action is expected to be noncontroversial because it is mandated by the Virginia General Assembly.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

This action repeals the entire chapter, 4VAC25-10, Public Participation Guidelines, and replaces it with a new chapter, 4VAC25-11, Public Participation Guidelines, as required by Chapter 321 of the 2008 Acts of Assembly. The new chapter has substantially similar provisions to the original chapter, and is based on the model public participation guidelines developed by the Department of Planning and Budget, with one exception. DMME has added one section to the model guidelines, "Agency secretary for purpose of appeal", a section carried over from the agency's existing guidelines. This section defines who in the agency shall act as "Agency secretary" for appeals of regulatory or case decisions pursuant to Rule 2A:2 of the Supreme Court of Virginia.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

The model public participation guidelines will provide advantages to the public in the form of more consistent public participation requirements for agencies in the rulemaking process. No disadvantages are anticipated for the public, the agency, or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

None of the provisions in this action are more restrictive than federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality will be particularly affected by this action.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

This action is mandated by Chapter 321 of the 2008 Acts of Assembly. The agency has no discretion and no alternatives in this matter.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	None
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	This action will cause no substantive change in the requirements for entities regulated by DMME.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	None of the entities regulated by DMME will be substantially affected by this action.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	None

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

This action is mandated by Chapter 321 of the 2008 Acts of Assembly. The agency has no discretion and no alternatives in this matter.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This action will have no impact on the institution of the family and family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

This action repeals the entire chapter, 4VAC25-10, Public Participation Guidelines, and replaces it with a new chapter, 4VAC25-11, Public Participation Guidelines, as required by Chapter 321 of the 2008 Acts of Assembly. The new chapter has substantially similar provisions to the original chapter, and is based on the model public participation guidelines developed by the Department of Planning and Budget, with one exception. DMME has added one section to the model guidelines, "Agency secretary for purpose of appeal", a section carried over from the agency's existing guidelines. This section, 4VAC25-11-120 in the new chapter, defines who in the agency shall act as "Agency secretary" for appeals of regulatory or case decisions pursuant to Rule 2A:2 of the Supreme Court of Virginia.